

**A RESOLUTION
BY CITY UTILITIES**

A RESOLUTION TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT WITH BRANTLEY STREET, LLC, PROVIDING FOR THE NON-STANDARD LOCATION OF CITY OF ATLANTA WATER METERS WITHIN PRIVATE PROPERTY AND PRIVATE RIGHTS OF WAY; TO REQUIRE AND ACCEPT AN EASEMENT FROM BRANTLEY STREET, LLC FOR THE PURPOSE OF ALLOWING THE CITY ACCESS TO ITS WATER METERS; AND FOR OTHER PURPOSES.

WHEREAS, Brantley Street, LLC ("Brantley") wishes to construct 25 residential, single-family detached homes in a subdivision located in a Master Planned community, known as Brantley Walk ("Subdivision") in the City of Atlanta ("City"); and

WHEREAS, the proposed single-family homes will be served with potable water from the City; and

WHEREAS, the City requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

WHEREAS, Brantley proposes to locate twenty six (26) water meters at locations within the Subdivision to service each individual proposed lot along and within private rights of way and private property, contrary to the City's requirements; and

WHEREAS, as a condition of granting Brantley's request, the City requires that an Agreement be entered into with Brantley, which sets forth the terms of the non-standard location of water meters on private property, including the installation of and responsibility for water system infrastructure, including water meters, and a requirement to grant the City an easement to access its water meters within private property to perform its respective duties related to its water system.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to execute an appropriate Agreement with Brantley Street, LLC ("Brantley") in substantial form as the agreement attached hereto as Exhibit "A" for the non-standard location of water meters on private property located within the Subdivision.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to prepare an appropriate agreement with Brantley in substantial form as the agreement attached hereto as Exhibit "A" for the non-standard location of water meters on private property located within the Subdivision, which specifically grants the City an appropriate easement to allow the City to enter onto the subject private property, now belonging to Brantley, for the purpose of performing all necessary duties related to the City's water system located on the private property ("Easement").

BE IT FURTHER RESOLVED, that the City's acceptance of the Easement shall be deemed to occur upon the final execution of the Agreement.

BE IT FINALLY RESOLVED, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Brantley, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Brantley.

AGREEMENT AND EASEMENT

This AGREEMENT AND EASEMENT ("Agreement") is entered into this ___ day of _____ 2005, between Brantley Street, LLC ("Brantley"), a Georgia limited liability company, and the City of Atlanta ("City"), a Georgia municipal corporation.

BACKGROUND:

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises, normally where the water meter is located and where the City's responsibility ends and the water customer's responsibility begins; and

Brantley is developing Brantley Walk, in Land Lot 245, 17th District, a residential planned development housing subdivision ("Subdivision"), currently consisting of twenty five (25) residential lots, located in the City of Atlanta, Fulton County, Georgia, and in which area water service is provided by the City; a description of the entire property being attached hereto and incorporated herein by reference as Exhibit "1"; and

Brantley proposes to locate up to twenty six (26) water meters at locations different than the service connection location, to allow each meter to be located on an individual lot and one meter on the Common Area controlled by the Subdivision Association.

Brantley, as part of the proposal, will install a water-main running to a fire hydrant in the middle and end of the Subdivision from a point located in _____. Water meters will be located at various points along the water main to service the lots as well as an additional meter for use by the Subdivision Association.

Accordingly, the City and Brantley agree as follows:

- 1. Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit A, entitled Utility Plan for Brantley Street Subdivision, prepared by Southland Services, Inc., dated October 15, 2003, last revised April 12, 2005. The water system for the Subdivision will contain individual water meters at the proximate locations shown on Exhibit A. The City agrees that each individual water meter will be read by the City or its representatives at the proximate locations set forth on Exhibit A for the purposes of rendering bills to each individual property owner for its respective and independent water use. Brantley hereby grants to the City and its representatives a perpetual non-exclusive easement to enter the Subdivision to read any meter. The easement granted in the previous sentence is limited to the area reasonably necessary for the City to read any meter. Brantley agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Subdivision a covenant that each property owner and the Subdivision Association: (i) acknowledges the City's or its representatives' easement to enter the Subdivision, including all privately owned individual lots, to read water meters, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to water services provided to it and water infrastructure located within the Subdivision; (iii) acknowledges that water services provided to the Subdivision are governed, in addition to the City's Code of

Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence or the meter and a non-residential, Subdivision Association outlet must be maintained and repaired by the particular resident or the Subdivision Association, as the case may be, in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Subdivision Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Subdivision, except for claims relating from the City's or its representative's negligence or intentional misconduct.

2. **Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Subdivision will not be located where any individual water meter is located. Instead, the "service connection" location will be at the point of the water system ("Valve") as shown on Exhibit A, so that the City's responsibility for the public portions of the water system includes the Valve. Brantley agrees that it is entirely responsible, at its expense, for the construction of all water services infrastructure located immediately after the "service connection" and throughout the Subdivision. The City's approval of Exhibit A does not encompass an approval that the materials proposed to be installed in the Subdivision in the form of water services infrastructure, except for materials identified on the Exhibit A as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

3. **Miscellaneous:**

- 3.1. **Future Modifications to Exhibit A Authorized.** Should the Subdivision be modified in the future so as to alter or increase the land area and number of individual residential water meters within the Subdivision beyond that set forth in Exhibit A, the provisions of this Agreement shall also apply to said modified area and associated individual water meters. In the event of such modification, Brantley agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".
- 3.2. **Binding Effect.** This Agreement, including the easements and obligations herein, are binding upon Brantley and the City, and their successors, successors in title (as to Brantley and the Subdivision) and assigns.
- 3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement never been a part of this Agreement.
- 3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.

3.5. Forum Selection Clause. The City and Brantley agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.

3.6. Ethics: Gratuities And Kickbacks.

3.6.1. Gratuities and Kickbacks. The right of Brantley to proceed under this Agreement may be terminated if, after notice and hearing, City determines that Brantley:

- 3.6.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and
- 3.6.1.2. intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. Rights and Remedies. The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. Contingent Fees. Brantley warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that Brantley has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from Brantley the full amount of such fee, commission, percentage, gift or consideration.

3.8. Further Acts. Brantley agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

Signed, Sealed and Delivered
in the presence of:

BRANTLEY STREET, LLC

WITNESS

Name:
Title: Manager

NOTARY PUBLIC
My Commission Expires:
(NOTARY SEAL)

Signed, Sealed and Delivered
in the presence of:

CITY: CITY OF ATLANTA

WITNESS

MAYOR

NOTARY PUBLIC
My Commission Expires:
(NOTARY SEAL)

ATTEST:

MUNICIPAL CLERK (Seal)

APPROVED:

APPROVED AS TO FORM:

COMMISSIONER, DEPARTMENT OF
WATERSHED MANAGEMENT

CITY ATTORNEY